



General Assembly

**Substitute Bill No. 272**

February Session, 2022



**AN ACT REQUIRING CERTAIN FINANCING DISCLOSURES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2022*) As used in this section, and  
2 sections 2 to 13, inclusive, of this act:

3 (1) "Closed-end financing" means a closed-end extension of credit,  
4 secured or unsecured, including financing with an established principal  
5 amount and duration, and equipment financing that is not considered a  
6 lease, as defined in section 42a-2A-102 of the general statutes, the  
7 proceeds of which the recipient does not intend to use primarily for  
8 personal, family or household purposes;

9 (2) "Commercial financing" means open-end financing, closed-end  
10 financing, sales-based financing, factoring transaction or any other form  
11 of financing, the proceeds of which the recipient does not intend to use  
12 primarily for personal, family or household purposes;

13 (3) "Factoring transaction" means an accounts receivable purchase  
14 transaction that includes an agreement to purchase, transfer or sell a  
15 legally enforceable claim for payment held by a recipient for goods the  
16 recipient has supplied or services the recipient has rendered that have  
17 been ordered but for which payment has not yet been made;

18 (4) "Finance charge" means the cost of financing as a dollar amount,  
19 including (A) any charge payable directly or indirectly by the recipient  
20 and imposed directly or indirectly by the provider as an incident to or a  
21 condition of the extension of financing, (B) all charges that would be  
22 included under the definition of "finance charge" in 12 CFR Part 1026.4,  
23 as amended from time to time, as if the transaction were subject to said  
24 section, and (C) any charges as determined by the Banking  
25 Commissioner;

26 (5) "Financial institution" means any of the following: (A) A bank,  
27 trust company or industrial loan company doing business under the  
28 authority of, or in accordance with, a license, certificate or charter issued  
29 by the United States, this state or any other state, district, territory or  
30 commonwealth of the United States that is authorized to transact  
31 business in this state; (B) a federally chartered savings and loan  
32 association, federal savings bank or federal credit union that is  
33 authorized to transact business in this state; or (C) a savings and loan  
34 association, savings bank or credit union organized under the laws of  
35 this or any other state that is authorized to transact business in this state;

36 (6) "Open-end financing" means an agreement for one or more  
37 extensions of open-end credit, secured or unsecured, the proceeds of  
38 which the recipient does not intend to use primarily for personal, family  
39 or household purposes, and includes credit extended by a provider  
40 under a plan in which: (A) The provider reasonably contemplates  
41 repeated transactions; (B) the provider may impose a finance charge  
42 from time to time on an outstanding unpaid balance; and (C) the amount  
43 of credit that may be extended to the recipient during the term of the  
44 plan up to any limit set by the provider is generally made available to  
45 the extent that any outstanding balance is repaid;

46 (7) "Person" means an individual, corporation, partnership, limited  
47 liability company, joint venture, association, joint stock company, trust  
48 or unincorporated organization, including, but not limited to, a sole  
49 proprietorship;

50 (8) "Provider" means a person who extends a specific offer of  
51 commercial financing to a recipient and includes, unless otherwise  
52 exempt, a person who solicits and presents specific offers of commercial  
53 financing on behalf of a third party, but does not include any: (A)  
54 Financial institution or affiliate of a financial institution; (B) person  
55 acting in such person's capacity as a technology services provider to an  
56 entity exempt under this section for use as part of the exempt entity's  
57 commercial financing program, provided such person has no interest,  
58 arrangement or agreement to purchase any interest in the commercial  
59 financing extended by the exempt entity in connection with such  
60 program; (C) lender regulated under the federal Farm Credit Act, 12  
61 USC 2001 et seq.; (D) commercial financing transaction secured by real  
62 property; (E) lease as defined in section 42a-2A-102 of the general  
63 statutes; (F) person or provider who makes no more than five  
64 commercial financing transactions in this state in a twelve-month  
65 period; or (G) individual commercial financing transaction in an amount  
66 over five hundred thousand dollars;

67 (9) "Recipient" means a person, or the authorized representative of a  
68 person, who applies for commercial financing and is made a specific  
69 offer of commercial financing by a provider, but does not include a  
70 person who is acting as a broker;

71 (10) "Sales-based financing" means a transaction that is repaid by the  
72 recipient to the provider over time as (A) a percentage of sales or  
73 revenue, in which the payment amount may increase or decrease  
74 according to the volume of sales made or revenue received by the  
75 recipient, or (B) according to a fixed payment mechanism that provides  
76 for a reconciliation process that adjusts the payment to an amount that  
77 is a percentage of sales or revenue; and

78 (11) "Specific offer" means the specific terms of commercial financing,  
79 including price or amount, that is quoted to a recipient based on  
80 information obtained from or about the recipient, which, if accepted by  
81 a recipient, shall be binding on the provider, as applicable, subject to  
82 any specific requirements stated in such terms.

83       Sec. 2. (NEW) (*Effective October 1, 2022*) For purposes of determining  
84 whether a financing is a commercial financing, the provider may rely on  
85 any statement of intended purposes by the recipient. The statement may  
86 be (1) a separate statement signed by the recipient; (2) contained in the  
87 financing application, financing agreement or other document signed or  
88 consented to by the recipient; or (3) provided orally by the recipient so  
89 long as it is documented in the recipient's application file by the  
90 provider. Electronic signatures and consents are valid for purposes of  
91 this section. The provider shall not be required to ascertain that the  
92 proceeds of a commercial financing are used in accordance with the  
93 recipient's statement of intended purposes.

94       Sec. 3. (NEW) (*Effective October 1, 2022*) A provider shall provide to a  
95 recipient at the time of extending a specific offer for sales-based  
96 financing the following disclosures in a format prescribed by the  
97 Banking Commissioner:

98       (1) The total amount of the commercial financing and the  
99 disbursement amount, if different from the financing amount, after any  
100 fees are deducted or withheld at disbursement;

101       (2) The finance charge;

102       (3) The estimated annual percentage rate, using the words annual  
103 percentage rate or the abbreviation "APR", expressed as a yearly rate,  
104 inclusive of any fees and finance charges, and calculated in accordance  
105 with the federal Truth in Lending Act, Regulation Z, 12 CFR 1026.22, as  
106 amended from time to time, based on the estimated term of repayment  
107 and the projected periodic payment amounts. The estimated term of  
108 repayment and the projected periodic payment amounts shall be  
109 calculated based on the projection of the recipient's sales. The projected  
110 sales volume may be calculated using the historical method or the opt-  
111 in method as described in subparagraphs (A) and (B) of this subdivision.  
112 The provider shall provide notice to the Banking Commissioner of  
113 which method the provider intends to use in all instances of sales-based  
114 financing offered in calculating estimated annual percentage rate

115 pursuant to this section;

116 (A) A provider using the historical method shall use an average  
117 historical volume of sales or revenue by which the financing's payment  
118 amounts are based and the estimated annual percentage rate is  
119 calculated. The provider shall fix the historical time period used to  
120 calculate the average historical volume and use such period for all  
121 disclosure purposes for all sales-based financing products offered. The  
122 fixed historical time period shall either be the preceding time period  
123 from the specific offer or, alternatively, the provider may use average  
124 sales for the same number of months with the highest sales volume  
125 within the past twelve months. The fixed historical time period shall be  
126 not less than one month and shall not exceed twelve months; and

127 (B) A provider using the opt-in method shall determine the estimated  
128 annual percentage rate, the estimated term and the projected payments  
129 using a projected sales volume that the provider elects for each  
130 disclosure, provided such provider participates in a review process  
131 prescribed by the commissioner. A provider shall, not later than October  
132 1, 2023, and annually thereafter, report data to the commissioner of  
133 estimated annual percentage rates disclosed to recipients and actual  
134 retrospective annual percentage rates of completed transactions. The  
135 report shall contain such information as the commissioner may  
136 prescribe as necessary or appropriate for the purpose of making a  
137 determination of whether the deviation between the estimated annual  
138 percentage rate and actual retrospective annual percentage rates of  
139 completed transactions was reasonable. The commissioner shall  
140 establish the method of reporting and may, upon a finding that the use  
141 of projected sales volume by the provider has resulted in an  
142 unacceptable deviation between estimated and actual annual  
143 percentage rate, require the provider to use the historical method. The  
144 commissioner may consider unusual and extraordinary circumstances  
145 impacting the provider's deviation between estimated and actual  
146 annual percentage rate in the determination of such finding;

147 (4) The total repayment amount, which is the disbursement amount

148 plus the finance charge;

149 (5) The estimated time period required for the periodic payments to  
150 equal the total amount required to be repaid based on the projected sales  
151 volume;

152 (6) The payment amounts, based on the projected sales volume as  
153 follows: (A) For payment amounts that are fixed, the payment amounts  
154 and frequency, and, if the payment frequency is other than monthly, the  
155 amount of the average projected payments per month; or (B) for  
156 payment amounts that are variable, a payment schedule or a description  
157 of the method used to calculate the amounts and frequency of payments,  
158 and the amount of the average projected payments per month;

159 (7) A description of all other potential fees and charges not included  
160 in the finance charge, including, but not limited to, draw fees, late  
161 payment fees and returned payment fees;

162 (8) If the recipient elects to pay off or refinance the commercial  
163 financing prior to full repayment, the provider shall disclose: (A)  
164 Whether the recipient will be required to pay any finance charges other  
165 than interest accrued since the recipient's last payment and, if so, the  
166 percentage of any unpaid portion of the finance charge and the  
167 maximum dollar amount the recipient may be required to pay; and (B)  
168 whether the recipient will be required to pay any additional fees not  
169 already included in the finance charge;

170 (9) A description of collateral requirements or security interests, if  
171 any; and

172 (10) If the commercial financing agreement includes a waiver of the  
173 recipient's right for a hearing concerning the attachment of the  
174 recipient's bank account, a clear and conspicuous disclosure that: (A)  
175 The recipient has a right to such a hearing if the provider pursues such  
176 attachment, and (B) such waiver may result in the attachment of the  
177 recipient's bank account without a hearing.

178       Sec. 4. (NEW) (*Effective October 1, 2022*) A provider shall provide to a  
179 recipient at the time of extending a specific offer for closed-end  
180 financing the following disclosures in a format prescribed by the  
181 Banking Commissioner:

182       (1) The total amount of the commercial financing and the  
183 disbursement amount, if different from the financing amount, after any  
184 fees are deducted or withheld at disbursement;

185       (2) The finance charge;

186       (3) The annual percentage rate, using only the words "annual  
187 percentage rate" or the abbreviation "APR", expressed as a yearly rate,  
188 inclusive of any fees and finance charges that cannot be avoided by a  
189 recipient, and calculated in accordance with the federal Truth in  
190 Lending Act, Regulation Z, 12 CFR 1026.22, as amended from time to  
191 time;

192       (4) The total repayment amount, which is the disbursement amount  
193 plus the finance charge;

194       (5) The term of the financing;

195       (6) The payment amounts as follows: (A) For payment amounts that  
196 are fixed, the payment amounts and frequency, and, if the term is longer  
197 than one month, the average monthly payment amount; or (B) for  
198 payment amounts that are variable, a full payment schedule or a  
199 description of the method used to calculate the amounts and frequency  
200 of payments, and, if the term is longer than one month, the estimated  
201 average monthly payment amount;

202       (7) A description of all other potential fees and charges that can be  
203 avoided by the recipient, including, but not limited to, late payment fees  
204 and returned payment fees;

205       (8) If the recipient elects to pay off or refinance the commercial  
206 financing prior to full repayment, the provider shall disclose whether

207 the recipient would be required to pay: (A) Any finance charges other  
208 than interest accrued since the recipient's last payment and, if so,  
209 disclosure of the percentage of any unpaid portion of the finance charge  
210 and maximum dollar amount the recipient may be required to pay; and  
211 (B) any additional fees not included in the finance charge;

212 (9) A description of collateral requirements or security interests, if  
213 any; and

214 (10) If the commercial financing agreement includes a waiver of the  
215 recipient's right for a hearing concerning the attachment of the  
216 recipient's bank account, a clear and conspicuous disclosure that: (A)  
217 The recipient has a right to such a hearing if the provider pursues such  
218 attachment; and (B) such waiver may result in the attachment of the  
219 recipient's bank account without a hearing.

220 Sec. 5. (NEW) (*Effective October 1, 2022*) A provider shall provide to a  
221 recipient at the time of extending a specific offer for open-end financing  
222 the following disclosures in a format prescribed by the Banking  
223 Commissioner:

224 (1) The maximum amount of credit available to the recipient and the  
225 amount scheduled to be drawn by the recipient at the time the offer is  
226 extended, if any, minus any fees deducted or withheld at disbursement;

227 (2) The finance charge, which, for the purposes of open-end  
228 financing, shall assume the maximum amount of credit available to the  
229 recipient, in each case, is drawn and held for the duration of the term or  
230 draw period;

231 (3) The annual percentage rate, using only the words "annual  
232 percentage rate" or the abbreviation "APR", expressed as a nominal  
233 yearly rate, inclusive of any fees and finance charges that cannot be  
234 avoided by a recipient, and calculated in accordance with the federal  
235 Truth in Lending Act, Regulation Z, 12 CFR 1026.22 and based on the  
236 maximum amount of credit available to the recipient and the term  
237 resulting from making the minimum required payments for the term as

238 disclosed;

239 (4) The total repayment amount, which is the draw amount, minus  
240 any fees deducted or withheld at disbursement, plus the finance charge.  
241 The total repayment amount shall assume a draw amount equal to the  
242 maximum amount of credit available to the recipient if drawn and held  
243 for the duration of the term or draw period;

244 (5) The term of the plan, if applicable, or the period over which a draw  
245 is amortized;

246 (6) The payment frequency and amounts, based on the assumptions  
247 used in the calculation of the annual percentage rate, including a  
248 description of payment amount requirements such as a minimum  
249 payment amount, and if the payment frequency is other than monthly,  
250 the amount of the average projected payments per month. For payment  
251 amounts that are variable, the provider shall include a payment  
252 schedule, or a description of the method used to calculate the amounts  
253 and frequency of payments, and the estimated average monthly  
254 payment amount;

255 (7) A description of all other potential fees and charges that can be  
256 avoided by the recipient, including, but not limited to, draw fees, late  
257 payment fees and returned payment fees;

258 (8) If the recipient elects to pay off or refinance the commercial  
259 financing prior to full repayment, the provider shall disclose whether  
260 the recipient would be required to pay: (A) Any finance charges other  
261 than interest accrued since the recipient's last payment and, if so,  
262 disclosure of the percentage of any unpaid portion of the finance charge  
263 and maximum dollar amount the recipient could be required to pay; and  
264 (B) any additional fees not already included in the finance charge;

265 (9) A description of collateral requirements or security interests, if  
266 any; and

267 (10) If the commercial financing agreement includes a waiver of the

268 recipient's right for a hearing concerning the attachment of the  
269 recipient's bank account, a clear and conspicuous disclosure stating that:  
270 (A) The recipient has a right to such a hearing if the provider pursues  
271 such attachment; and (B) such waiver may result in the attachment of  
272 the recipient's bank account without a hearing.

273       Sec. 6. (NEW) (*Effective October 1, 2022*) A provider shall provide to a  
274 recipient at the time of extending a specific offer for a factoring  
275 transaction the following disclosures in a format prescribed by the  
276 Banking Commissioner:

277       (1) The amount of the receivables purchase price paid to the recipient  
278 and, if different from the purchase price, the amount disbursed to the  
279 recipient after any fees deducted or withheld at disbursement;

280       (2) The finance charge, which, for the purposes of a factoring  
281 transaction, includes the discount taken on the face value of the accounts  
282 receivable;

283       (3) The estimated annual percentage rate, using that term, calculated  
284 according to the federal Truth in Lending Act, Regulation Z, 12 CFR  
285 1026 Appendix J, as amended from time to time, as a single advance,  
286 single payment transaction. To calculate the estimated annual  
287 percentage rate, the purchase amount is the financing amount, the  
288 purchase amount minus the finance charge is the payment amount, and  
289 the term is established by the payment due date of the receivables. As  
290 an alternate method of establishing the term, the provider may estimate  
291 the term for a factoring transaction as the average payment period,  
292 using its historical data over a period not to exceed the previous twelve  
293 months, concerning payment invoices paid by the party owing the  
294 accounts receivable in question;

295       (4) The total payment amount, which is the purchase amount plus the  
296 finance charge;

297       (5) A description of all other potential fees and charges that may be  
298 avoided by the recipient;

299 (6) A description of the receivables purchased and any additional  
300 collateral requirements or security interests; and

301 (7) If the commercial financing agreement includes a waiver of the  
302 recipient's right for a hearing concerning the attachment of the  
303 recipient's bank account, a clear and conspicuous disclosure that: (A) the  
304 recipient has a right to such a hearing if the provider pursues such  
305 attachment; and (B) such waiver may result in the attachment of the  
306 recipient's bank account without a hearing.

307 Sec. 7. (NEW) (*Effective October 1, 2022*) The Banking Commissioner  
308 may require a provider extending a specific offer for commercial  
309 financing that is not open-end financing, closed-end financing, sales-  
310 based financing or a factoring transaction, but which otherwise is  
311 commercial financing, to provide to a recipient at the time of extending  
312 such specific offer the following disclosures in the format prescribed by  
313 the Banking Commissioner:

314 (1) The total amount of the commercial financing and the  
315 disbursement amount, if different from the financing amount, after any  
316 fees deducted or withheld at disbursement;

317 (2) The finance charge;

318 (3) The annual percentage rate, using only the words "annual  
319 percentage rate" or the abbreviation "APR", expressed as a yearly rate,  
320 inclusive of any fees and finance charges, and calculated in accordance  
321 with the relevant sections of Part 1026 of the federal Truth in Lending  
322 Act, Regulation Z or sections 1 to 10, inclusive, of this act;

323 (4) The total repayment amount which is the disbursement amount  
324 plus the finance charge;

325 (5) The term of the financing;

326 (6) The payment amounts, as follows: (A) For payment amounts that  
327 are fixed, the payment amounts and frequency, and the average

328 monthly payment amount; or (B) for payment amounts that are variable,  
329 a payment schedule or a description of the method used to calculate the  
330 amounts and frequency of payments, and the estimated average  
331 monthly payment amount;

332 (7) A description of all other potential fees and charges that can be  
333 avoided by the recipient, including, but not limited to, late payment fees  
334 and returned payment fees;

335 (8) If the recipient elects to pay off or refinance the commercial  
336 financing prior to full repayment, the provider shall disclose whether  
337 the recipient would be required to pay: (A) Any finance charges other  
338 than interest accrued since the recipient's last payment and, if so,  
339 disclosure of the percentage of any unpaid portion of the finance charge  
340 and maximum dollar amount the recipient may be required to pay; and  
341 (B) any additional fees not already included in the finance charge;

342 (9) A description of collateral requirements or security interests, if  
343 any; and

344 (10) If the commercial financing agreement includes a waiver of the  
345 recipient's right for a hearing concerning the attachment of the  
346 recipient's bank account, a clear and conspicuous disclosure that: (A) the  
347 recipient has a right to such a hearing if the provider pursues such  
348 attachment; and (B) such waiver may result in the attachment of the  
349 recipient's bank account without a hearing.

350 Sec. 8. (NEW) (*Effective October 1, 2022*) If as a condition of obtaining  
351 commercial financing the provider requires the recipient to pay off the  
352 balance of an existing commercial financing from the same provider, the  
353 provider shall disclose to the recipient:

354 (1) The amount of the new commercial financing used to pay off the  
355 portion of the existing commercial financing that consists of prepayment  
356 charges required to be paid and any unpaid interest expense that was  
357 not forgiven at the time of renewal. For financing for which the total  
358 repayment amount is calculated as a fixed amount, the prepayment

359 charge is equal to the original finance charge multiplied by the amount  
360 of the renewal used to pay off existing financing as a percentage of the  
361 total repayment amount, minus any portion of the total repayment  
362 amount forgiven by the provider at the time of prepayment. If the  
363 amount is more than zero, such amount shall be included in the  
364 disclosure as the answer to the following question and presented as  
365 follows: "Does the renewal financing include any amount that is used to  
366 pay unpaid finance charge or fees, also known as double dipping? Yes,  
367 (enter amount). If the amount is zero, the answer would be No."

368 (2) If the disbursement amount will be reduced to pay down any  
369 unpaid portion of the outstanding balance, the actual dollar amount by  
370 which such disbursement amount will be reduced.

371 Sec. 9. (NEW) (*Effective October 1, 2022*) The provider shall obtain the  
372 recipient's signature, which may be fulfilled by an electronic signature,  
373 on all disclosures required to be presented to the recipient pursuant to  
374 sections 1 to 10, inclusive, of this act before authorizing the recipient to  
375 proceed further with the commercial financing transaction application.

376 Sec. 10. (NEW) (*Effective October 1, 2022*) Nothing in sections 1 to 10,  
377 inclusive, of this act shall prevent a provider from providing or  
378 disclosing additional information on a commercial financing being  
379 offered to a recipient, provided such additional information shall not be  
380 disclosed as part of the disclosure required by sections 1 to 10, inclusive,  
381 of this act. If other information concerning financing costs is disclosed  
382 or used in the application process of a commercial financing, such  
383 information shall not be presented as a rate if it is not the annual interest  
384 rate or the annual percentage rate. The term interest, when used to  
385 describe a percentage rate, shall only be used to describe annualized  
386 percentage rates, such as the annual interest rate. When a provider states  
387 a rate of finance charge or a financing amount to a recipient during an  
388 application process for commercial financing, the provider shall also  
389 state the rate as an annual percentage rate, using that term or the  
390 abbreviation "APR".

391 Sec. 11. (NEW) (Effective October 1, 2022) If the Banking Commissioner  
392 determines that the laws of another state require commercial financing  
393 disclosures that meet or exceed the commercial financing disclosure  
394 requirements established under sections 1 to 10, inclusive, of this act,  
395 any commercial financing disclosure form that such other state  
396 approves for the purposes of complying with such other state's  
397 commercial financing disclosure laws may be used for the purposes of  
398 complying with the commercial financing disclosure requirements  
399 established under sections 1 to 10, inclusive, of this act.

400 Sec. 12. (NEW) (Effective October 1, 2022) The Banking Commissioner  
401 may adopt regulations in accordance with the provisions of chapter 54  
402 of the general statutes to carry out the provisions of sections 1 to 11,  
403 inclusive, of this act.

404 Sec. 13. (NEW) (Effective October 1, 2022) (a) Any provider who  
405 violates any provision of sections 1 to 11, inclusive, of this act or any  
406 regulation adopted pursuant to section 12 of this act shall be liable for a  
407 civil penalty of not more than two thousand dollars for each violation  
408 or, in the case of a wilful violation, not more than ten thousand dollars  
409 for each violation.

410 (b) In addition to any penalty imposed pursuant to subsection (a) of  
411 this section, if the Banking Commissioner finds that a provider has  
412 knowingly violated any provision of sections 1 to 11, inclusive, of this  
413 act or any regulation adopted pursuant to section 12 of this act, the  
414 commissioner may order additional relief, including, but not limited to,  
415 a permanent or preliminary injunction on behalf of any recipient  
416 affected by the violation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2022	New section
Sec. 2	October 1, 2022	New section
Sec. 3	October 1, 2022	New section
Sec. 4	October 1, 2022	New section

Sec. 5	<i>October 1, 2022</i>	New section
Sec. 6	<i>October 1, 2022</i>	New section
Sec. 7	<i>October 1, 2022</i>	New section
Sec. 8	<i>October 1, 2022</i>	New section
Sec. 9	<i>October 1, 2022</i>	New section
Sec. 10	<i>October 1, 2022</i>	New section
Sec. 11	<i>October 1, 2022</i>	New section
Sec. 12	<i>October 1, 2022</i>	New section
Sec. 13	<i>October 1, 2022</i>	New section

**Statement of Legislative Commissioners:**

In Section 2, "for purposes of the foregoing sentence" was changed to "for purposes of this section" for consistency with the style of the general statutes; and, in Section 3(3), "as described in subparagraphs (A) and (B) of this subsection" was changed to "as described in subparagraphs (A) and (B) of this subdivision" for accuracy.

**BA**        *Joint Favorable Subst.*